

REMARKS

Claims 1-18 and 20-48 are pending in this application. Claims 1-14 and 33-47 have been withdrawn from consideration as being directed to non-elected inventions. Claim 27 has been canceled without prejudice. Claims 22 and 24 have been amended to correct typographical errors.

Support for the amendments to claims 22 and 24 can be found in the specification on page 28, lines 18-23 and on page 64, lines 7-10.

As a result of the foregoing amendment, claims 15-18, 20-26, 28-32 and 48 remain for consideration.

No new matter has been added by way of this amendment. Reconsideration of this application is respectfully requested.

Claim Rejections under 35 U.S.C. §112, second paragraph

Claim 27 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner alleges that claim 27 recites the limitation “wherein the two homologous nucleotide sequences are IRESEGFP” and that the exact nucleotide sequence encompassed by this term is not described in the instant application and does not appear to be a consensus sequence known in the art.

Applicants respectfully traverse this rejection and have canceled claim 27 without prejudice in order to place the present application in condition for allowance. In light of the foregoing, Applicants respectfully request withdrawal of the rejection.

Double Patenting

Claims 15-17, 20, and 48 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-50 of U.S. Patent No. 6,143,566. Furthermore, claims 15-17, 20 and 48 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 13-30 of U.S. Patent No. 6,130,090. Applicants respectfully traverse the Examiner’s rejection and herewith file a Terminal Disclaimer in compliance with 37 CFR 1.321(c), disclaiming the term of any patent granted on the instant application beyond that of the aforementioned patents. In light of the foregoing, withdrawal of the rejection is respectfully requested.

Claim Objections

Claims 18, 21-26, and 28-32 are objected to as being dependent upon a rejected claim. Applicants assert that this objection is obviated in light of the herein provided Terminal Disclaimer in compliance with 37 CFR 1.321(c), disclaiming the term of any patent granted on the instant application beyond that of the aforementioned patents. Withdrawal of the objections is respectfully requested.

Fees

A check in the amount of \$55 is enclosed to cover the cost of the Terminal Disclaimer for a small entity. No other fees are believed to be required, but if so, the Commissioner is hereby authorized to charge any fees, or credit any overpayment, to Deposit Account No. 11-1153.

Conclusion

Applicants believe that the foregoing amendments to the claims and the submission of a Terminal Disclaimer place the application in condition for allowance. Withdrawal of the rejections is respectfully requested. If a discussion with the undersigned will be of assistance in resolving any remaining issues, the Examiner is invited to telephone the undersigned at (201) 487-5800, ext. 118, to effect a resolution.

Respectfully submitted,

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Enclosure: Terminal Disclaimer